

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, MAY 17, 2006  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in special session on Wednesday, May 17, 2006 at 4:30 p.m. in the council chambers of city hall at 104 North 5<sup>th</sup> Street.

**Board Members Present:** Andy Dunn, Darren Jones, Helen Spann, George Stockton, Scott Seiber

**Board Members Absent:** Ed Davis and Bill Whitaker

**Also Present:** Candace Dowdy, Sam Perry, David Roberts, Mike Pitman, Kristen Taylor, Joe Walker, Tommy Carroll, Chris Smee, Amanda Roach, Jason Pittman, Barry James, Rick Fritschle, Robert Price, Renee Price, Megan Price, Michael Scott Taylor, Michelle Clark and other public audience

Acting Chair, Helen Spann called the meeting to order at 4:30 p.m., and welcomed the guests and applicants. Chair Spann requested approval of the April 19, 2006 regular meeting minutes. Scott Seiber stated that there were only a couple of typographical errors which would not change the substance of the minutes. **Scott Seiber made a motion to approve the minutes as presented with the typographical corrections. George Stockton seconded the motion and the motion carried with a 5-0 voice vote.**

**Dimensional Variance Request For Front Setback On Freestanding Sign—404 North 4<sup>th</sup> Street—Shroat Development:** Sam Perry stated that Joe Walker from Shroat Development is the property manager for Eddie Shroat, the owner of 404 North 4<sup>th</sup> Street. It is a five unit commercial building next to Burl's Wrecker Service. The proposed sign will be triangular from overhead view and two sides of the triangle will have signage. The green color and roof material will match the building. Mr. Walker is requesting that the sign be four (4') feet from the right-of-way to maintain the bi-directional parking lot aisle. The sign will have removable panels which can be changed as tenants change. There are two existing sign poles which the property owner is willing to remove. The maximum of eighty (80) square feet would be permitted for this site. Staff is interpreting the proposed square footage for one side, because only one side can be seen at a time. The sign area is 32 square feet. Andy Dunn asked if a parking variance would have to be granted if the sign was pulled back behind the ten (10') foot setback. Mr. Perry stated that the aisle would have to be one-way only, 16 feet wide. The required landscaping will be installed at the base of the sign. Scott Seiber stated that the angle of the sign seems to limit visibility.

Chair Spann swore in Joe Walker. Mr. Walker presented a three dimensional model of the sign. Mr. Walker explained that there would be lattice on the faces of the sign and there would be six inch by five feet (6" x 5') vinyl ribbons that would be used for advertisement of each tenant. There will be vinyl siding on the lower portion. The sign is intended to be an extension of the

building, regarding style. Mr. Walker stated that the roof will have an eighteen-inch overhang, at six feet high. The purpose of the sign is to boost the success of the building. Andy Dunn asked if the business signs will be consistent. Mr. Walker stated that they would be the same size, font and shape. Mr. Walker stated that the angle of the faces is related to construction ease. The back of the sign will be closed in. The sign will not be lighted, but could be in the future. George Stockton asked if there will be a sign for the name of the complex. Mr. Walker stated that there will be identification for "4<sup>th</sup> Street Business Complex" at the top, slightly larger than the business names. The board discussed safety concerns of the overhang. **Scott Seiber made a motion to approve a six (6') foot front setback variance for the sign for Shroat Development with the condition that there be seven (7') feet of ground clearance on the overhang for pedestrian safety and that the two additional nonconforming sign poles be removed, based on the findings that it will take the place of the traditional pylon signs that the city is trying to eliminate, the style will reduce the amount of space required to advertise for the existing businesses, that it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow unreasonable circumvention of the requirements of the zoning regulations. Andy Dunn seconded the motion and the motion carried with a 5-0 vote.**

**Dimensional Variance Request For Front Setback And Height Variances On Freestanding Sign—505 South 12<sup>th</sup> Street—Tommy Carroll:** Sam Perry stated that this was the old Log Cabin Restaurant property and since the business was changing, the sign was required to come into conformance with the 12<sup>th</sup> Street regulations, which requires monument-style signs. Mr. Perry stated that the new property use will be an automobile sales business. The top two portions of the sign, reading "Triangle Plaza" and "Log Cabin Restaurant" will be removed. The top of the portion proposed to remain will be 13 feet. Ten (10) feet is the maximum height of a monument sign, so a variance of three (3') feet is being requested. The sign has been at this site for at least 40 years. A brick base is planned for the sign, which will include the required landscaping. There is no record of the distance from the front of the sign to the right-of-way. From 1966 right-of-way drawings, it appears that the sign may be partially in the right-of-way. Mr. Perry recommended that the board place condition that the Department of Highways review the sign and approve continuing the use. The sign will be setback further because of the removal of the top two frames. Darren Jones asked about the square footage. The proposed square footage is 53 square feet, which is two square feet under the maximum allowable for one business. Scott Seiber asked for an explanation of how the brick base fits with the existing protective pipes. Mr. Perry stated that if there is a property line between this sign and the Mur-Cal Realty sign, then there will need to be a side setback variance granted.

Chair Spann swore in Tommy Carroll. Mr. Carroll stated that his intention was to brick under the protective pipes, so that they would still serve as protection. Mr. Carroll stated that the large reader board will be replaced with a permanent panel. Mr. Carroll stated that there was a property line between the two signs. Mr. Carroll also stated that 12-15' was taken from the front of the property when it was widened to four lanes. Mr. Perry stated that the sign needs an eight (8') foot side setback variance. Mr. Perry stated that Mr. Carroll requests a three (3') height, eight (8') side and ten (10') front variance. Chair Spann asked Mr. Carroll what his alternative

was if the variance was not granted. Mr. Carroll stated that he originally made the sign 22 years ago and that it cost about seven thousand dollars at that time. Mr. Carroll stated that he did not want to do away with that investment and start from scratch. Mr. Carroll stated that he had a car lot there previously, but it could not be grandfathered-in because of the restaurant use. Mr. Carroll stated that his proposal falls more in line with the current zoning ordinance. George Stockton asked how difficult it would be to lower the sign another three (3') feet since the top two panels are already being removed. Mr. Carroll stated that even if the sign were not already there, he would be asking for a height variance for a brand new sign, due to sale vehicles blocking the sign. Mr. Carroll stated that modern SUVs and vans have a height of eight (8') feet and will block the sign, if it is short. Mr. Carroll cited the example of Family Dollar, across the street, if a car were parked in front of the sign. Candace Dowdy stated that it will be necessary to establish the location of the right-of-way to keep sale vehicles on private property. Andy Dunn asked if there was enough information to grant a variance. Legal counsel, Mike Pitman, stated that the board should focus on the issue of the height variance and if the sign does not meet monument criteria that can be dealt with at another time. Scott Seiber stated that this is not and can not be a typical monument sign, because of its location it has to be protected with pipes, which changes the appearance. Mr. Carroll stated that the north entrance would not be used by customers. Mr. Seiber stated that he saw Mr. Carroll's point that parked cars would block the lower portion of the sign. Mr. Seiber asked Mr. Perry if the state would have any problems with the sign. Mr. Perry stated that they most likely would not because it is farther from the main roadway, due to the right-of-way curving at this point. Ms. Dowdy stated that cars will have to be kept back so that drivers can access the Mur-Cal entrance to the north.

**George Stockton made a motion to grant a three (3') foot height variance for the sign at 505 South 12<sup>th</sup> Street, using a portion of the existing sign, also grant an eight (8') foot side setback variance with the condition that planning staff not issue the sign permit until the Department of Highways approves the location of the sign, the top two (2) panels must be removed and the applicant work with staff regarding the design of the base; motion based on the fact that it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public and will not allow unreasonable circumvention of the requirements of the zoning regulations. Scott Seiber seconded the motion and the motion carried with a 5-0 vote.**

**Public Hearing To Review Conditional Use Application To Allow Single Family Residential Use Above Business Use In B-3 Zoning District—103 North 6<sup>th</sup> Street—Chris and April Smees:**

Sam Perry stated that the Smees were in the process of purchasing the Art Guild property. Currently there is not a permitted use for single-family with business or single-family by itself in the B-3 zone. The Smees are planning to live at the property, renovate the home, operate a small computer repair business in one of the rooms on the lower level and also prepare one of the other rooms on the lower level as a leaseable office space. There is a separate outside entrance for the proposed leaseable office space. Mr. Perry stated that there is a conditional use option for the owner or employee to live above or to the rear of the permitted use in a B-3 zone. Mr. Perry stated that there are parking spaces for at least 14 cars in the attached gravel lot. Scott Seiber stated that it seemed to be ample parking. There is a one-way access to the parking area on the west side of the home, by way of an alley from North 6<sup>th</sup> Street. Mr. Seiber asked about paving the parking area. Mr. Perry stated that if the parking lot were expanded by five (5) or

more spaces, than it would have to be paved within one (1) year. There are no plans for, nor is there room for expansion.

Chair Spann opened the public hearing and stated the procedures of the hearing. Chair Spann swore in Chris Smee. Mr. Smee stated that since there is access to the upstairs from the kitchen and there is a separate entrance for the leaseable space on the northeast corner, a business can operate without any interference from his family. Mr. Seiber asked if the business space could access the kitchen. Mr. Smee stated that it could not be, and that if a suitable tenant was found, a separate bathroom could be constructed for the business. Mr. Seiber asked what type of tenants they were looking for. Mr. Smee stated that it could be for anyone needing a meeting place or needing a space for light office work. Mr. Smee gave the example of wedding planning, or any business that would not have a large volume of foot traffic. Mr. Seiber stated that his concern was heavy traffic with the one-way access. Mr. Smee stated that there were also parallel spaces on the street. Mr. Smee explained that the alley is shared with the law office next door. Andy Dunn asked how much walk-up business he expected for his computer repair business. Mr. Smee stated that he estimated one or two customers per day. This is a start-up business. Mr. Seiber asked how he planned to identify the business. Mr. Smee stated that he planned to use the existing Art Guild sign frame. Mr. Seiber asked what compelled the Smees to use this property for their plans. Mr. Smee stated that the combination of residential and business use saved money, as well as the Art Guild property being a landmark and easy for folks to recognize. Mr. Seiber asked about the structural integrity. Mr. Smee stated that it was inspected and found to be sound, but that there has not been a lot done since the Art Guild has owned the property and it is now mainly in need of some tender loving care. Darren Jones asked if there had been any calls from adjoining property owners. Staff stated that there had not been any. Scott Seiber stated that the plan was a good idea and that it would enhance the zoning district, not impair. Candace Dowdy stated that building and fire codes associated with mixed uses in one building would need to be met. Mike Pitman recommended making the building and fire code compliance a condition, if the permit were granted. Sam Perry stated that the home was on the National Register of Historic Places. Mr. Seiber asked what regulations that the renovation process would have to meet. Mr. Perry stated that there is no local regulation of renovating historic properties because there is not a historic overlay district established and that the Architectural Review Board is not active at this time. Mr. Perry stated that while the National Register brings significance to the property, it is up to the local community to pass and enforce restoration and protection guidelines. **Darren Jones made a motion to approve the conditional use permit request, as presented, from Christopher and April Smee for the use of property in a B-3 zoning district at 103 North 6<sup>th</sup> Street as a single-family residence in combination with business use on the lower level, based on the findings that it would promote the public health, safety and welfare in the zone, enhance the integrity of the zone because of the historic nature of the home with conditions that the applicant meet regulations imposed by other city officials and that any new signage does not exceed the current signage used by The Art Guild. Andy Dunn seconded the motion and the motion carried with a 5-0 vote.**

**Public Hearing To Review Conditional Use Application To Allow Preschool Learning Center In Agricultural Zoning District—1653 North 16<sup>th</sup> Street—Amanda Roach:** Candace Dowdy stated that Ms. Amanda Roach and Mr. Jason Pittman approached the Planning

Department about purchasing the property at 1653 North 16<sup>th</sup> Street. The property was originally used as the Jehovah's Witness Church, originating in the late 1950s. The property was annexed into the city in July 1974. At the time of annexation the zoning was established as Agricultural. Ms. Dowdy stated that all the property surrounding the church, at that time was being used for agricultural purposes. The property is for sale and has been vacant for a period of time. On the same lot, north of the church building, is a small parsonage. The parsonage portion of the property was annexed into the city in September 2000. At that time, the entire property was in the city and all zoned AG. The Planning Commission established the zoning as AG with the following findings: (1) the remainder of the property to the south was already agricultural zoning, (2) there were not any adjacent property owners present, that were in opposition, (3) surrounding property to the south, as well as property east of 16<sup>th</sup> Street was also AG. There were no other specific reasons why it was established as AG, other than the fact that this would make the entire property agricultural zoning.

Ms. Dowdy stated that churches, religious education buildings and accessory dwellings are allowed as a permitted use in the AG zoning district. Ms. Dowdy stated that schools and colleges for academic instruction are also a permitted use. Ms. Dowdy stated that before the board opens the public hearing, she recommends the board consider interpreting whether a preschool learning center would fall under the realm of a "school or college for academic instruction," because in today's business world, daycares are commonly called preschools. There is an established curriculum in place by Ms. Roach. There is a copy on file. Ms. Dowdy stated that it was not just a "babysitting service" or "nursery school."

Ms. Dowdy recommended that if the board found that the definition of the permitted use, "schools or colleges for academic instruction," could not include Ms. Roach's facility, than an alternative may be to investigate the possibility of a conditional use. Ms. Dowdy stated that the board has also made interpretations for applicants requesting a land use that is not specifically listed, but does fall within the category of similar land uses. Ms. Dowdy stated that planning staff realizes that all land uses which exist in the City of Murray are not listed in the zoning ordinance in the permitted and conditional uses. Ms. Dowdy gave the example of the B-1 zoning district allowing unlisted land uses, only with the granting of a conditional use permit. Ms. Dowdy commented that there is a discrepancy in the AG zoning district with churches being listed both in the permitted and the conditional uses. Ms. Dowdy read the remainder of the permitted uses in the AG zoning district and summarized the board's options for review.

Andy Dunn asked Ms. Dowdy if after looking at the curriculum, if the educational requirements of the children are being met. Ms. Dowdy stated that the facility is licensed by the State of Kentucky, which has certain requirements. Ms. Dowdy stated that planning staff has not researched the requirements but that the applicant is considering the facility an advanced learning center in preparation for a child entering kindergarten. Ms. Dowdy read the definition of a daycare from the Murray Zoning Ordinance: "any place, home or institution which receives four (4) or more children conducted for cultivating the normal aptitude for exercise, play, observation, imitation and instruction." Ms. Dowdy stated that the only other location where a daycare is mentioned is in the R-4 (Multi-Family) zoning district, as a conditional use. Ms. Dowdy stated that in the city there are daycares in the B-1, B-2, R-2 and R-5. In those instances,

even though the daycare is not stated in those particular districts, the board has reviewed them and found that the concept of the application fell within the guidelines for that zoning district. Ms. Dowdy stated that although an open conditional use permit is not listed in the AG district, the applicant is asking for the board to review the possibility, if it is not found to be a permitted use.

Ms. Dowdy stated that the Comprehensive Plan shows the future land use for the area across the street, to the east, to be moderate density residential, which could have multi-family apartments, condominiums, townhouses, row houses and uses that would be appropriate in the R-4 zoning district. Ms. Dowdy noted some other uses in the general vicinity is a mobile home park located on N. 16<sup>th</sup> Street which is zoned R-3A, some B-2 zoning along Diuguid Drive and the Charette property which was rezoned to B-2 as well. Ms. Dowdy pointed out the nearby county areas and also pointed out that there was R-4 and B-2 zoned areas on Utterback Road. Ms. Dowdy stated that the Comprehensive Plan Future Land Use shows this area as part of the Urban Services Area and that there is the potential for growth in this area. There are provisions in the area for some possible mixed use. There is an elementary school in this area and the street may possibly be widened at some point in the future. Planning staff feels that some mixed use in the area would not be bad and read what the Comprehensive Plan states in regards to converting AG areas into more intensely developed areas because of annexation pressures. Ms. Dowdy stated that staff feels that it is possible for this application to fit as a conditional use in the AG district and followed to say that there are single-family dwellings on both sides, as well as across the street. Ms. Dowdy stated that past annexations were done in a fashion where the default zoning was established as Agricultural. Ms. Dowdy gave the example of the southeast corner of Hunters Pointe. Ms. Dowdy stated that the golf course is in the county, but that there are some commercial zoning districts south of this property, as well as down Utterback Road.

Scott Seiber asked about the size of the property. Sam Perry stated that it was just over an acre. Ms. Dowdy showed recent photographs of the property. Ms. Dowdy explained that the applicants had artistic renderings which showed a new playground as well as protecting the area and making it safe because of possible concerns with the golf course to the rear. Ms. Dowdy explained where the driveway access points were and that the applicant is planning to live in the house on the premises.

Legal counsel, Mike Pitman recommended to hold the public hearing before determining which path to take, whether as a permitted use or as a conditional use. Mr. Pitman recommended that the board return to the stated options after the public hearing, because he did not think that a determination could be made yet. Ms. Dowdy gave the definition of a preschool as an “educational institution for children too young for elementary school.”

Scott Seiber stated that definitely could be looked at in that category, but that might circumvent a situation where a discussion needs to take place. Ms. Dowdy confirmed that the applicant has been made aware of the process of a conditional use permit. Ms. Dowdy stated that the only records that the city has of the church property is a building permit for restrooms added in 1975 and a building permit for an addition in 1981. Ms. Dowdy was unsure how long the property had been vacant, but that some small churches have started there and moved on after growing.

Chair Spann opened the public hearing. Chair Spann asked for a show of hands of those in favor of the application and for those in opposition. Chair Spann swore in Jason Pittman and Amanda Roach. Mr. Pittman stated that he was representing Amanda Roach with this application, as a joint venture. Mr. Pittman stated that Ms. Roach would be able to answer the questions relating to the curriculum, since she is a teacher and the director at the facility. Mr. Pittman passed out a packet (Exhibit 1-Applicant), including a notarized letter from an adjacent property owner who was not able to attend due to work this evening. Mr. Pittman stated that also included were guidelines and curriculum requirements from the Kentucky Department of Education (KDE) for preschools as well as pictures that will be presented. Mr. Pittman stated that this application is set apart from other typical conditional use permit requests because Ms. Roach is planning to live on the property. Mr. Pittman stated that they had originally approached the realtor about splitting the property up, but that was not an option. The property has sat vacant for some time and there has been very little interest in it because there is not anyone interested in putting a church there. Mr. Pittman stated that there is a back-up offer on the table now, which would require the full rezoning process for the intended land use, if they are not able to get the property. Mr. Pittman stated that they are very familiar with the surrounding land uses of the residential homes as well as the business being the Sullivan's Golf Course. They are also aware of the residential feel and the potential growth of the area. They are sensitive to the concept of making the look and feel of the preschool fit in with the surrounding area. Mr. Pittman referred to the architectural renderings and stated that the playground area would be enclosed from view of residential neighbors, the golf course, as well as protect the area. Mr. Pittman stated that appropriate trees for screening would be planted, in addition to the white vinyl fence. Mr. Pittman stated that they were planning to spend about \$5-10,000 on exterior improvements. Mr. Pittman stated that there was a vegetated area that was previously a parking area, which they may improve in the future. Mr. Pittman stated that folks may use the entrance to the parsonage, but that their intention is to educate customers to use the main parking lot area entrance. Mr. Pittman stated that there is excessive shrubbery that will be removed to improve roadway visibility and that appropriate landscaping will be installed. A new sign of monument-style will be installed.

Mr. Pittman stated that since the adoption of the AG zone, the functions of certain businesses have significantly changed. During the past 25 years, the importance of early childhood education and development has become more important to parents, who are not only leaving home for the workplace, but also focusing on the early education of their children in preparation for public and private school. Daycares are no longer babysitting services. New Beginnings Learning Center is by all definitions a preschool, whether it is publicly or privately operated. Privately operated schools are becoming more common in Murray. Mr. Pittman gave the example of Mother's Day out at First Baptist Church and Eastwood Academy on KY Highway 94 East. There is a curriculum in place. Mr. Pittman stated that zoning areas should be fluid enough to recognize and adapt to these changes.

Mr. Pittman referred to the packet and the requirements of the KDE. Mr. Pittman stated that New Beginnings meets and exceeds these requirements. Students are taught numbers, phonics, spelling, ABCs, problem-solving skills, real-life experiences, personal skills, field trips and other

training. There is an assessment testing with three different levels. One factor that sets this facility apart is that a child has to meet a certain level of excellence before moving up to the next level. Amanda Roach gave the example that potty-training was required in order to move up to the next level. Mr. Pitman stated that the facility is licensed and recognized by the state and has to be inspected annually for strict compliance and that Ms. Roach has qualified people teaching that have been trained. Scott Seiber asked Ms. Roach if she currently operates a pre-school somewhere else. She stated that she currently rents a facility on Center Drive. Mr. Seiber asked Ms. Roach how many children she was licensed for. Ms. Roach stated that she was licensed for 29 children and that she currently had 32 enrolled but they were not all there at the same time. Ms. Roach stated that if she relocates her business to this location that she would only be increasing the number of children by five. She plans to add a baby room. Ms. Roach stated that the average age of children varies from one to seven but she will be able to accept a six week old baby if she adds the baby room. Darren Jones asked how long she had been at this job. Ms. Roach stated seven years. Jason Pittman noted there would not be “night-time” care. Ms. Roach indicated 85% of her day is devoted to curriculum. Jason Pittman commented on the expansion of the city and encourages the supporters and dissenters in the surrounding area to provide feedback and open to suggestions on how to improve their idea.

Andy Dunn asked about the parking situation. Jason Pittman reviewed the current parking situation and will keep the area along 16<sup>th</sup> street clear of traffic and provide adequate parking. Ms. Roach stated that at her current location they have six parking spaces with four employees and there are no traffic jams.

Mr. Seiber inquired about the location of the proposed preschool in that it is located next to a golf course. Jason Pittman acknowledged its proximity and stated they would put the playground area on the opposite side of where the golf course and the building would act as a “blockade.” Trees would also be placed accordingly and the idea of possibly setting up a net has been considered. Mr. Seiber stated some sort of barrier needs to be set in place. “In good conscience,” Mr. Seiber does not know if he can accept this proposal because of risk to injury. Jason Pittman expressed that many of the surrounding residents had concerns if a net or other barrier were set in place it would take away from the residential nature. Jason Pittman explained the current golf course, batting cage, and putt-putt course are of no more distraction than a barrier would be. Mr. Seiber asked if the students would ever be off the property. Ms. Roach stated they would always remain on the property. Darren Jones expressed his concern as well of the safety because of past experiences including hosting a golf tournament. Jason Pittman said they would address any legal issues as they are set forth.

Mr. Stockton expressed concerns over the busy street and the entrance into the property in knowing where the entrance would be located in regards to Utterback Road. Mr. Stockton commented on difficulties of visibility when crops were in season along the road. Jason Pittman stated the entrance would line up with Utterback Road, which is why they would locate the parking lot further south. Ms. Roach stated that according to state law, the students must be inside a fenced area if they are outside, unless they are getting on a school bus or getting into an automobile. Ms. Dowdy showed pictures she took standing on Utterback Road. Jason Pittman estimated that Utterback Road was 150-200’ from the proposed southern entrance.



Randy Hutchens, attorney representing the opposition, requested permission from Chair Spann to ask Ms. Roach a couple of questions. Mr. Hutchens asked what agency Ms. Roach was licensed under. Ms. Roach stated it was under the Cabinet of Family and Children, which licenses daycares, but is not licensed under the Department of Education. Mr. Hutchens asked if any employee has a preschool or elementary education certification. Ms. Roach stated not yet. Mr. Hutchens ask Ms. Roach if her business was for profit. Ms. Roach stated that her preschool is a “for-profit” business. Mr. Hutchens asked how many parking spaces were planned for at this location. Jason Pittman stated that they did not have a definite number at this time and that the design of the parking lot would be addressed at a later time.

Chair Spann asked if anyone else would be speaking on their behalf.

Chair Spann swore in Michael Scott Taylor. Mr. Taylor praised the efforts of Ms. Roach and her daycare service. Mr. Taylor recounted a story of him locking his keys in his car with his two year old son locked inside. Mr. Taylor credits the efforts of Ms. Roach’s daycare of being able to teach his son properly and allowed him to be able to unlock the door. Mr. Taylor explained that he felt the location would not be much of a safety concern. Mr. Taylor explained the location would be situated near the tee-box of the second hole and almost out of range for those shooting from hole number one. Mr. Taylor acknowledged the current AG district shifting to a residential district would be of good reason to address the traffic situation along North 16<sup>th</sup> Street. Mr. Taylor went on to comment the choice of having suitable daycares to select from is important for those moving to Murray.

Chair Spann asked if anyone else would be speaking in favor of the application.

Chair Spann swore in Michelle Clark. Ms. Clark too praised the effort of Ms. Roach’s daycare service and explains this through recounting a story of when her daughter was lost and able to explain how to get home. Ms. Clark said it is more than a daycare and will provide adequate safety for kids.

Chair Spann asked if anyone else would be speaking in favor of the application. Being none Chair Spann asked for a statement from the opposition.

Chair Spann swore in Lynn Sullivan. Mr. Sullivan commented on the fact that the church has been there for 40 years and feels it is not intrusive to the neighborhood and that the church is in suitable condition. Mr. Sullivan noted that his parents have not had any issues with the church since they have lived and operated the golf course there and have always had a good relationship with the church. Mr. Sullivan noted that his parents have worked their lifetime to build the golf course and as Mr. Pittman stated it is a business, but it is also a recreational facility. Mr. Sullivan stated that they love kids and that part of their business is based on kids and they just don’t want to see any kids get hurt. Mr. Sullivan commented that he has concerns of children being hit with a golf ball and explained that the skull of a child is not fully developed and a golf ball can cause serious damage to the head if hit. Mr. Sullivan commented that golf balls do travel in the direction of the entire proposed daycare facility, not just the play area. Mr. Sullivan

stated that he and his parents have had windows knocked out before from golf balls. Mr. Sullivan stated that he cannot recall ever seeing a daycare next to a golf course. Mr. Sullivan stated that the daycare would be considered a business and that most of the surrounding area is residential in nature. Mr. Sullivan presented a signed petition of nearby property owners wanting to maintain this location with a residential look.

Randy Hutchens asked if it was common to see golf balls go into the said property. Mr. Sullivan stated yes. Mr. Hutchens asked if any person ever goes into this area looking for or retrieving golf balls. Lynn Sullivan agreed that it was a common occurrence. Mr. Hutchens asked if the proposed play area would be a common area for golf balls to land. Lynn Sullivan said it would and agreed a tree would not stop golf balls from traveling over the trees. Mr. Hutchens noted that Lynn Sullivan presented the board members with a packet of information from his father, James Sullivan prior to the meeting and would like to have that labeled as an exhibit #3 for the records. Mr. Hutchens asked if having a daycare at this location would be a "hazard". Lynn Sullivan stated that it would. Mr. Hutchens asked if the golf course would be liable if an injury did occur. A past incident was recalled in which the golf course was sued because a golf ball traveled into a neighboring yard. Lynn Sullivan stated kids would be at a "great risk." Mr. Hutchens asked if Lynn Sullivan would want a daycare next to his single family residence. Lynn Sullivan stated, "No, that when they built there the subdivision was already there. Mr. Hutchens asked about the business district to the south and the nearby residential district. Lynn Sullivan stated that the residents in this area are concerned about it going to a more commercial district if this is allowed.

Mr. Hutchens asked Mr. Sullivan if in his opinion is 16<sup>th</sup> Street a narrow street with no shoulder to the road. Lynn Sullivan explained that it is narrow with a substantial traffic flow during the school year. He also stated that cars often drive fast along this portion of 16<sup>th</sup> Street. Mr. Hutchens and Lynn Sullivan also acknowledged that along the driving range there are very tall trees and a fence that is approximately 15' tall that golf balls easily travel over.

Mr. Seiber asked if a net would be a sufficient safety measure. Lynn Sullivan would like to think so, but feels children get out into unprotected areas. Mr. Seiber stated that he has heard a lot about the single family aspect of this neighborhood and that whether it is single family or multi family, however it develops the traffic issue is going to increase and get worse regardless of what happens with the church property. Mr. Seiber asked if there was anything Ms. Roach could do to mitigate the situation to allow this facility in the neighborhood. Lynn Sullivan responded by saying that as things are changed significantly on this property the fact still remains that a net just over the play area does not fully ensure safety.

Chair Spann swore in James Sullivan. Mr. Sullivan stated that he built the golf course in 1989 and opened in July 1990. Mr. Sullivan stated that he built his house in 1992. Mr. Sullivan gave testimony to the fact he does not want the preschool at this location because of a possible net being put up and the safety concerns involved. Mr. Sullivan stated that he does not want to see a business next to his home. Mr. Sullivan recalls situations of golf balls traveling through the window of his house and surrounding areas.

Chair Spann asked if anyone wanted to speak in response to the opposition. Jason Pittman reiterated that it is a “conditional use” being applied for this property only and will not be affecting other surrounding properties.

James Sullivan commented on the safety concerns with the traffic. Lynn Sullivan noted the concerns of Mr. Bill McKeel that lives along Utterback Road and expressed his feelings that there needs to be no more traffic.

Mr. Hutchens explained that conditional use permits can only be given to establishments not seeking to make a profit and would open up the door to allow preschools in every zoning district if approved. The local ordinances and in conjunction with the law, would have to be considered an officially licensed school in order for this to work. Mr. Hutchens stated that if the city approves this and the Sullivans get sued, what is the insurance company for the Sullivans going to do? Mr. Hutchens stated that his advice to the Sullivan’s would be to sue the city for allowing the conditional use. Mr. Hutchens stated that he and Mike Pitman had a discussion prior to the meeting and that he feels like there is some real qualified immunity that would protect the city but city could be involved in some litigation because due to allowing a dangerous condition to occur. Mr. Hutchens stated that he is not sure if the board can properly find the daycare is essential to the safety of the area.

Mike Pitman reiterated the point that Ms. Roach is applying for a conditional use, not to rezone the property or adjoining property. The board needs to decide if what they described fits into Section II, Article 8, D6 as a school, and fits the description of promoting health, safety, and welfare.

Mr. Seiber stated that he is not sure if this would be considered a permitted use and therefore, he could not support this in good conscience based on the information provided.

Andy Dunn explained that the main question is, “Is this considered a school?” Mr. Seiber commented he does not know if that is their decision to make. Mr. Stockton does not believe there has been a convincing argument that this is a school under the definition; safety is an issue, of course, but this issue needs clarification first. Mike Pitman agrees it is a “gray” issue without a lot of clarification. Mr. Seiber stated he feels “comfortable a conditional use permit is not in order; but do not feel comfortable at all saying this qualifies.”

**Scott Seiber stated that while he does appreciate the presentation made by the applicant and does wish them well in this process he will make a motion to deny the conditional use permit request based on the reason that it would not promote the public health, safety or welfare in that particular area. Andy Dunn seconded the motion.** Helen Spann stated that in consideration of the discussion about this being a single-family residential area, a child-care center is compatible with single-family residences and seems to be something that is needed. There are several other land uses that could be much more detrimental to the area, than a daycare center. Ms. Spann questioned the definition and licensing procedure for this type facility, citing that there were unanswered questions. **The motion carried with a 4-1 vote. Helen Spann voted no.**

**Dimensional Variance Request For A Side Yard Setback On Proposed Addition At 311 North 7<sup>th</sup> Street—Barry And Cindy James:** Sam Perry explained the home is currently 8.5' from the property line on the north side; the 1.5' variance would continue the building line with the current setback. Because that does not meet regulations to expand that non-conforming structure, he needs 1.5' setback variance. Adjacent property owner, Mr. Fender, has no issues with wanting to issue the variance.

Chair Spann swore in Barry James. Mr. James added that the property is 300' deeper than the diagram shows (485' total). Mr. Seiber asked if this would be Mr. James last addition. Mr. James stated that it was. Mr. James inquired about possibly building a detached carport in the rear of the house. Ms. Dowdy explained it has to be at least five feet from the property line.

**Scott Seiber made a motion to approve the one and a half (1.5') foot side setback variance, as requested, based on the finding that the addition will not bring the house any closer to the side property line, than it is already built. Darren Jones seconded the motion and the motion carried with a 5-0 vote.**

**Public Hearing To Review Conditional Use Application To Allow Three Non-Related Persons To Occupy The Premises In R-2 Zoning District—201 South 13<sup>th</sup> Street—Robert Price:** Sam Perry noted the location, just south of Poplar Street, to the board members. Mr. Perry stated that the house to the south has been demolished. He also showed a sight drawing of the driveway which could accommodate up to four cars. (2 on gravel, 2 on concrete). The concrete area is where a former carport was located. Sam Perry indicated there is additional parking along Poplar Street. Mr. Perry commented the Price's have a son that may want to occupy the house once he is in college, but for the short term, it is for the Price's daughter. Mr. Seiber asked who owns the current property. Mr. Perry was not sure but said the Price's were in the process of purchasing it, which is contingent upon the granting of the conditional use. Mr. Perry said the only phone call was from the Dinh's, who are adjacent property owners, just asking what the public hearing was in regards to.

Mr. Stockton asked how long the duplex on the Dinh's property had been there. Ms. Dowdy was not sure but felt it has been there for a while since duplexes are not allowed in single family zoning districts.

Chair Spann opened the public hearing. Chair Spann swore in Robert Price. Mr. Price explained his family had hand selected two other girls to live with his daughter, Meagan. Mr. Price said his family has the economic resources and the fact Meagan's dormitory is a little distracting for wanting to look for property near campus. The Price's have previous experience with buying property and renovating it. Current property is in rather good condition. They have agreement with the owners, the Ashcrafts, to remain at the property until August 1<sup>st</sup>, contingent upon them doing some minor fix up work. Mr. Price has spoken with the parents of the girls they will be renting to and have explained they must conduct themselves properly.

Mr. Seiber asked about the status of his son, and how long they plan on using this house. Mr. Price estimated 6 to 7 years, at the most. His son is a senior in high school. Mr. Price explained his intentions are not to make a profit, but to provide a safe environment that is close to campus. Mr. Seiber asked if the intentions were to sell it after his son has completed college. Mr. Price stated it is their intention to sell the home, but would possibly reconsider keeping it as a second home for the family, but not for renting purposes. Mr. Seiber commented on the difference between females and males renting/living together and that it would be a good idea for the Price's to reapply once his son is ready to occupy the premises. Darren Jones noted that it is still required for freshman to live in the dorms their first year, thus making it at least one year before Price's son could move into the house.

Chair Spann asked if anyone else wanted to testify in favor. No other person testified in favor. Chair Spann asked if anyone wanted to testify in opposition. Chair Spann swore in David Roberts. Mr. Roberts has lived in the area for 18 years. Mr. Roberts commented on recent conditional uses granted in single family districts. Mr. Roberts explained that by granting this conditional use, it would encourage the market that realtors would like to see the area transform to. Potential buyers may not be looking aggressively enough in multi-family districts.

Mr. Price explained that his family went around to the adjacent property owners and explained their intentions. Mr. Seiber commented that if the board does approve this conditional permit there would be stringent rules in place, as taken from Mr. Robert's testimony. Mr. Price vouched for the character of her daughter and her friends to move in with her.

Chair Spann closed the public hearing. Mr. Stockton expressed his concern about granting this conditional use. He cited the area to the west of campus/16<sup>th</sup> Street where single family property owners no longer buy property, and does not want to see a similar situation. Mr. Seiber shares many of the same concerns, but feels it is sometimes a good idea to grant these conditional uses.

Andy Dunn asked how many conditional use permits have been issued on that area of town. Candace Dowdy was not sure, stated the north side of Poplar Street is multi-family. Unless there are complaints or obvious circumstances, it is somewhat unknown to how many multi-families are residing in single family districts. Along 13<sup>th</sup> Street most are single family, but a few along 13<sup>th</sup> have been granted conditional use permits. Sam Perry commented that Murray State does not always provide adequate housing. Mr. Seiber commented on the current market that Mr. Roberts alluded to and that apartment complexes are viewed by many as a dormitory-like setting.

**Scott Seiber made a motion to approve a conditional use permit for three (3) non-related persons to reside on the premises at 201 South 13<sup>th</sup> Street with the conditions that there be no more than three (3) people in residence on the property at any time, that when Megan Price graduates or otherwise leaves the property that the permit is considered void, there be no late hour activities that would cause disturbance to the neighbors, if there are such substantiated complaints from the public or there is law enforcement action taken, then this permit can be revoked. Andy Dunn seconded the motion.** Scott Seiber stated that the other child of the Price's would have to re-apply with this scenario. **The motion carried with a 4-1 vote. George Stockton voted no.**

**Dimensional Variance Request To Allow Accessory Structure In Side Yard And For One Additional Freestanding Sign—2185 U.S. 641 North—Max Arnold & Sons:** Candace Dowdy began by explaining that Interstate Scales, out of Evansville, is wanting to place an underground scale on this property. Ms. Dowdy explained it was brought before the BZA because an underground scale is considered to be an accessory structure because it is permanently attached to the ground with concrete over it that trucks drive up on to weigh. Accessory structures are only allowed in the rear of yards. Area looking for approval does not fall behind rear of building. Ms. Dowdy passed out pictures showing what the scale will look like and explained the layout of the BP station and property along 641 North. Ms. Dowdy stated they spoke with Mr. Fritschle earlier in the week and expressed the city had concerns about turning issues along this portion of 641 North. Ms. Dowdy explained that trucks will enter from the north, circle around, fuel up potentially and come around to the scales, exiting the south end. Ideally scales should be at the entrance of a truck stop, but the property at hand does not allow it. Overall width of property is 300' wide, 305' deep (2.85 acres).

Chair Spann swore in Rick Fritschle. Mr. Fritschle and Max Arnold & Sons purchased this property three years ago and two other truck stops in the area that are similar to this site. Mr. Fritschle stated that it cost around \$100,000 to put a scale into the ground. Increased traffic flow along 641, extension of highway 80, and the overall changing market are reasons why they want to add the scale.

Mr. Fritschle explained the proposed sign is not for advertisement purposes along 641, rather for identification to truck drivers weighing their trucks. The two issues when applying for the scale and sign are first, the proposed use is lying on permanent access easement owned by Jerry Rayburn, whom according to Mr. Fritschle, has agreed to give waiver for this location. Secondly, they had to apply for a dimensional variance because this will not be located to the rear of gas station, rather to the side, to keep their already limited parking. This is being done as a service to truck drivers to ensure they are meeting driving standards by not exceeding certain weights.

Mr. Seiber wanted to know why Murray would need a scale. Fritschle explained with the current market, lack of weigh stations in the area, and traffic, it would be a good time to add one at this location; however, he did acknowledge they could be doing this a little in advance of when it is a necessity. Fritschle explains most drivers like to fuel before gassing up their trucks so they know how much fuel to add. This location would not allow for this to happen. It is unknown how many truck drivers would want to weigh first, come out and cross 641 southbound, head north, and reenter the gas station. Chair Spann asked about possibly creating parking spaces to the south of the gas station and building the scale in the back. Fritschle stated there would not be enough room to the rear of the building. Mr. Stockton asked where drivers go to adjust their axels? Fritschle explained it depends upon factors, but is normally done at the fuel islands. Fritschle commented that this would require trucks to pull back out onto 641 to reenter. Stockton commented on the safety concerns of the area. Fritschle acknowledged the safety concerns, but went on to comment that Murray will continue to generate heavy truck flow.

Mr. Seiber asked if the state had been contacted about possibly building this weigh station. Fritschle stated he had recently spoken with Ms. Dowdy about the traffic issues and lack of a deceleration lane, but had yet to contact the state on the issue. Mr. Stockton asked of the possibility of trucks entering the southernmost entrance, because of its proximity to the weigh area. Fritschle explained with how the sign would be facing and directional guidelines trucks should not come in that entrance. He goes on to explain they would rather place it in a better location, but it is not possible. It will also generate business from local companies, not just highway traffic flow.

Mr. Seiber asked of the possibility of a deceleration lane. David Roberts stated coming from north (going south) would have to use the west side shoulder. Heading north would have to be similar to what is in front of Webasto, using the median with a traffic light and extra turning lane. Mr. Roberts commented the city has contacted the state about addressing the issue but has received no feedback. Potential development in the future will deal with deceleration lanes and similar issues.

Mr. Seiber asked about a time-frame for the completion. Fritschle is hoping to have the scale in by the late summer of 2007. He goes on to comment he plans on being a positive for the local economy by possibly offering lower diesel prices, possibly adding a Taco Bell, but notes it will increase traffic in the area. Fritschle asked to answer any questions regarding the potential sign. Mr. Seiber stated it was not much concern of the board, but the traffic concerns were. Mr. Stockton and Mr. Fritschle both commented on how the sign will not be for advertising purposes.

Chair Spann swore in Bob Meece of Interstate Scales. Meece explained how signs are positioned at truck stops and it should not be of confusion at this location. Darren Jones asked how truck drivers receive their certified receipts. Meece states they go inside, pulling up to a designated location, to receive their receipts. There will be room enough, as stipulated by Federal Law, to pull the truck to a safe location when collecting the receipt inside the gas station. There should not be traffic build up at weigh stations. Marketing research shows if a scale is placed at this location, there will be an additional 5 truck increase per 100 trucks that enter (5%).

Meece comments on a pump system to get rid of access water and that no additional asphalt will be brought in to build the scale. Assured there would be plenty of room to construct the scale.

Chair Spann stated she thinks it would an asset for the community to build the scale but still has concerns of safety.

Mr. Meece asked Ms. Dowdy clarify the dimensional variance. It is considered an accessory structure because the scales are permanent and falls in line with the zoning ordinance. Structures similar to this are only allowed in rear yards, this one is to the side of the building. Mr. Meece asked if it were located in the rear if they would have to apply for a variance. Mr. Perry stated they would have to apply for a building permit. Ms. Dowdy said they would still have to apply for a variance, but questions of safety would still be at the forefront, not the sign itself.

Andy Dunn asked of the possibility of building the scale to the rear. Meece explained it would not be possible to add more fuel stations and that it would eliminate parking that is already limited, thus causing trucks to circle around using 641. The location in the back does not allow trucks to turn properly into the weigh stations. The current plan allows for trucks to wait in line, if need be.

Chair Spann asked how often trucks need to weigh on these scales? Meece said before trucks enter an interstate.

Scott Seiber commented on the possibility of finding another location because of the complications of this location. Fritschle commented they are always looking and will need additional profit centers to make it.

George Stockton asked how much of a concern it will be taking up both lanes of traffic on 641. Fritschle commented it is traffic issue that will only be addressed by the state and that adding 5% extra traffic flow will not dramatically change the current situation. Fritschle said they would be more than willing to contact and assist with the state on the issue and does acknowledge there will be an increase in traffic.

**Andy Dunn made a motion to deny the dimensional variance request due to the adverse affect on public health, safety, or welfare, specifically the safety hazards of a projected traffic increase at the property's entrance and exit areas with U.S. 641. George Stockton seconded the motion and the motion carried with a 5-0 vote.**

**Being of no further business, Andy Dunn made motion to adjourn. Darren Jones seconded the motion and the motion carried with a 5-0 voice vote.**

The meeting adjourned at 10:05 p.m.

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Acting Chair, Helen Spann

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Recording Secretary, Sam Perry